

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

JOEL RODRIGUEZ

VS.

WAL-MART STORES TEXAS, L.L.C.,

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CIVIL ACTION NO. _____
(DIVERSITY)

**NOTICE OF REMOVAL OF ACTION UNDER
28 U.S.C. § 1441(B) (DIVERSITY)**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant, **WAL-MART STORES TEXAS, L.L.C.**, hereby removes to this Court the state court action described below.

1. On November 26, 2018, an action was commenced in the County Court at Law No. 5, Hidalgo County, Texas, entitled, *Joel Rodriguez v. Wal-Mart Stores Texas, L.L.C.* in Cause Number CL-18-6688-E. A copy of the suit is *attached hereto as Exhibit A*.

2. The first date upon which Defendant, Wal-Mart Stores Texas, LLC, received a copy of the said complaint was November 28, 2018, when Defendant was served with a copy of the said complaint and a citation from the said State Court. A copy of the citation issued is *attached hereto as Exhibit B*. In accordance with Local Rule 81, the following constitutes all of the executed process, pleadings, and orders served upon Plaintiff and Defendant in this action:

- A) **Plaintiff's Original Petition (with Discovery) and Demand for Jury Trial;**
- B) **Copy of Citation issued to Defendant;**
- C) **Docket Sheet;**
- D) **Defendant's Original Answer, Affirmative Defenses to Plaintiff's Original Petition and Requests for Disclosure; and**

E) Defendant's Request for Jury Trial

In addition and in accordance with the Local Rule, Defendant includes a copy of the docket sheet of the state court matter a copy of which is *attached hereto as Exhibit C*.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action wherein the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. On November 28, 2018, the Plaintiff served upon the Defendant, Plaintiff's Original Petition with Jury Demand, a copy of which is *attached hereto as Exhibit A*. In this Original Petition, Plaintiff plead that he is seeking monetary damages over \$200,000.00 but no more than \$1,000,000.00. As such, the amount in controversy is in excess of \$75,000.00, and removal is appropriate pursuant to 28. U.S. § 1441(b).

4. Defendant is informed and believes that Plaintiff was and still is a citizen of the State of Texas and resides in, Hidalgo County.

5. Defendant, Wal-Mart Stores Texas, LLC, was, at the time of the filing of this action, and still is a corporation incorporated under the laws of the State of Delaware, having its principal place of business in the State of Arkansas, and has been served summons and complaint in this action.

6. Copies of all pleadings, process, orders and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. §1446(a).

7. Venue is proper in this district under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

8. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

9. Plaintiff and Defendant demanded a jury in the state court suit.

10. For the foregoing reasons, Defendant asks the Court to remove the suit to The United States District Court, Southern District of Texas, McAllen Division.

DATED: December 31, 2018.

Respectfully Submitted,

DAW & RAY, L.L.P.

/s/ Jaime A. Drabek

JAIME A. DRABEK, Attorney-in-Charge

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**ATTORNEYS FOR DEFENDANT,
WAL-MART STORES TEXAS, L.L.C.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record by electronic mail, or certified mail return receipt requested on this the 31th day of December, 2018, to-wit:

Mr. Rafael de la Garza
De La Garza Law Firm
4919 S. Jackson Rd.
Edinburg, Texas 78539
rdlglaw@gmail.com

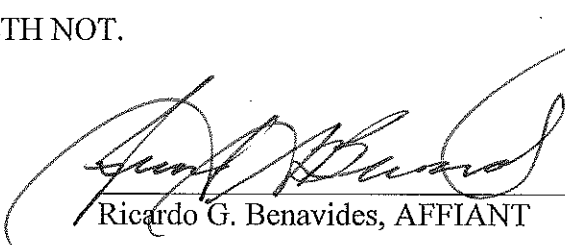
/s/ Jaime A. Drabek
Jaime A. Drabek

THE STATE OF TEXAS §
§
COUNTY OF HIDALGO §

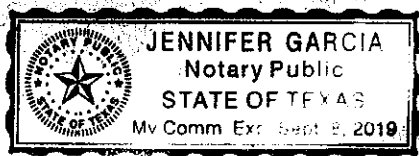
AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Ricardo G. Benavides of McAllen, Hidalgo County, Texas, who being by me duly sworn, deposes and says that he is an attorney for Defendant in the present cause filed by Joel Rodriguez; that he has been authorized to make this Affidavit; and that he has read the foregoing Notice of Removal and knows the contents thereof, and that the matters and facts therein contained are true and correct.

FURTHER AFFIANT SAYETH NOT.


Ricardo G. Benavides, AFFIANT

SWORN TO AND SUBSCRIBED before me on this 31st day of December,
2018.




NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS